

United States District Court, Northern District of Illinois

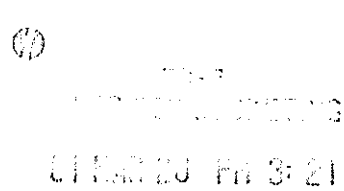
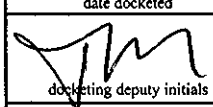
Name of Assigned Judge or Magistrate Judge	Matthew F. Kennelly	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	00 C 5067	DATE	3/19/2001
CASE TITLE	White vs. Interior Crafts, Inc.		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

DOCKET ENTRY:

- (1) ☐ Filed motion of [use listing in "Motion" box above.]
- (2) ☐ Brief in support of motion due _____.
- (3) ☐ Answer brief to motion due _____. Reply to answer brief due _____.
- (4) ☐ Ruling/Hearing on _____ set for _____ at _____.
- (5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (7) ☐ Trial[set for/re-set for] on _____ at _____.
- (8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.
- (9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ General Rule 21 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).
- (10) ☒ [Other docket entry] Enter memorandum opinion and order. The Court grants defendant's motion for summary judgment. The Clerk is directed to enter judgment in favor of defendant.
- (11) ☒ [For further detail see order attached to the original minute order.]

No notices required, advised in open court.		number of notices	Document Number <div style="font-size: 2em;">12</div>
No notices required.		MAR 21 2001 date docketed	
Notices mailed by judge's staff.		 docketing deputy initials	
Notified counsel by telephone.		date mailed notice	
<input checked="" type="checkbox"/> Docketing to mail notices. <input checked="" type="checkbox"/> Mail AO 450 form. <input type="checkbox"/> Copy to judge/magistrate judge.		mailing deputy initials	
JD	courtroom deputy's initials	Date/time received in central Clerk's Office	

immediately or be terminated. On July 17, White returned to work without obtaining a release from his doctor. On August 6, 1999, he filed a Statement of Claim for accident or sickness weekly benefits with Interior Crafts' insurance company. In response to this claim, White received accident and sickness benefits for the period of July 11 through July 20.

On October 22, 1999, White filed a second Statement of Claim for his knee injury. The attached Attending Physician's Statement stated that White should not have returned to work in July 1999 because he needed surgery to correct his knee. Interior Crafts replied to White's claim by stating that the coverage had been canceled effective November 1, 1999 because he had been discharged. On January 3, 2000, White requested that Interior Crafts provide him with access to his employment file, which Interior Crafts did by letter dated January 6, 2000. On February 15, 2000, White informed Interior Crafts that he expected to be authorized by his doctor to return to work on February 21, 2000 and that he would return to work on that date. On February 18, 2000, Interior Crafts sent White a letter informing him that he had been terminated on October 8, 1999 "because of your job performance after having been given warnings."

DISCUSSION

Summary judgment is appropriate if the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). The party seeking summary judgment must show that there is an absence of evidence to support the non-moving party's case. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). The non-moving party must then set forth specific facts showing that there is a genuine issue of material fact and that judgment as a matter of law would be inappropriate in the

present case. *Hedberg v. Indiana Bell Co.*, 47 F.3d 928, 931 (7th Cir. 1995). In considering a motion for summary judgment, the Court draws reasonable inferences from the record in the light most favorable to the non-moving party. *Id.*; *DeValk Lincoln Mercury, Inc. v. Ford Motor Co.*, 811 F.2d 326, 329 (7th Cir. 1987). "A genuine issue of fact exists only when a reasonable jury could find for the party opposing the motion based on the record as a whole." *Pipitone v. United States*, 180 F.3d 859, 861 (7th Cir.1999) (citation omitted).

To recover under the ADA, White must show that he is a "qualified individual with a disability" and that he was discriminated against because of that disability. 42 U.S.C. §12112(a); *Ross v. Indiana State Teacher's Association Insurance Trust*, 159 F.3d 1001, 1013 (7th Cir. 1998), *cert. denied*, 525 U.S. 1177 (1999). Courts recognize two types of discrimination claims under the ADA – disparate treatment and failure to make a reasonable accommodation. *Foster v. Arthur Andersen, LLP*, 168 F.3d 1029, 1032 (7th Cir. 1999). White's termination claim is based on a disparate treatment theory.

Under the ADA, a person is "disabled" if he has a physical or mental impairment that substantially limit the plaintiff in a major life activity, is regarded as having such a limitation, or has a record of having such a limitation. *See* 42 U.S.C. §12102 (2)(A), (B) & (C); *Sutton v. United Air Lines, Inc.*, 527 U.S. 471, 489 (1999). White claims he had an actual disability because his leg injury substantially limited his ability to work. *See* 29 C.F.R. §1630.2(i) (major life activities include caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working). To qualify, however, White's leg injury must have *substantially* limited these major life activities such that he was "unable to perform, or significantly restricted as to the condition, manner or duration under which the individual can

perform, a major life activity as compared to an average person in the general population.” See *Davidson v. Midelfort Clinic, Ltd.*, 133 F.3d 499, 505 (7th Cir. 1998). In determining whether an individual is substantially limited in a major life activity, courts consider not only the “nature and severity” of the impairment, but also the impairment’s “duration or expected duration” and the “permanent or long term impact.” See 29 C.F.R. §1630.2(j)(2)(i), (ii) & (iii).

White suffered from an injured leg that was treatable; his condition had substantially healed as of February 21, 2000. Whatever the severity of White’s impairment, it was not the type of long term impairment that would constitute a disability under the ADA. White’s leg condition improved after surgery, and he was authorized to return to work without needing any accommodation. “Intermittent, episodic impairments are not disabilities.” *Vande Zande v. State of Wisconsin Department of Administration*, 44 F.3d 538, 543 (7th Cir. 1995). See *Hamm v. Runyon*, 51 F.3d 721, 725 (7th Cir. 1995)(transitory and temporary physical impairments are not covered by the ADA); *Evans v. City of Dallas*, 861 F.2d 846, 852-53 (7th Cir. 1988)(plaintiff with a knee injury which required surgery was not a qualified individual with a disability within the meaning of the Rehabilitation Act given the transitory nature of the injury).

For these reasons, the Court concludes that White has failed to show that there is a triable issue as to whether he was actually disabled.

Our analysis of whether White was actually disabled within the meaning of the ADA does not end here, however, in light of his argument that he was “regarded as” disabled by Interior Crafts. Under the ADA, an employee is regarded as having a disability if his impairment does not substantially limit a major life activity, but the employer still treats the employee as if he had such a disability. See 29 C.F.R. §1630.2(g)(3); *Sutton*, 527 U.S. at 489. When it

terminated White at some point prior to November 1, 1999, Interior Crafts knew he was not attending work due to his leg injury. This by itself is not sufficient to give rise to a genuine issue as to whether the company regarded White as disabled within the meaning of the ADA. *See, e.g., Harrington v. Rice Lake Weighing Systems, Inc.*, 122 F.3d 456, 460-61 (7th Cir. 1997). To establish a “regarded as” claim, it is not enough for a plaintiff to show that the employer knew he had an impairment; he must show that the employer believed he had an impairment that substantially limited one or more of his life activities. *See, e.g., Amadio v. Ford Motor Co.*, 238 F.3d 919, 925 (7th Cir. 2001). “[T]he plaintiff must be regarded as having a substantial impairment, not just any impairment.” *Sanchez v. Henderson*, 188 F.3d 740, 745 (7th Cir. 1999). Here there is nothing in the record that suggests that when it terminated White, Interior Crafts believed, or had any reason to believe, that he had the type of long-term impairment necessary to qualify as a disability under the ADA.

CONCLUSION

For the foregoing reasons, the Court grants defendant’s motion for summary judgment [Item 5-1]. The Clerk is directed to enter judgment in favor of defendant.


MATTHEW F. KENNELLY
United States District Judge

Date: March 19, 2001